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CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

## Notification

The 10th July, 2023

**No. 13/1/9983-HII(2)-2023/9653.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 102/2018 dated 02.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

LAL CHAND S/O SH. PURAN CHAND, R/O HOUSE NO.367, SAKETRI, DISTRICT PANCHKULA (HARYANA) (Workman)

AND

- (1) SECURE GUARD SECURITY & MANPOWER SOURCES HAVING REGISTERED OFFICE AT 151, INDUSTRIAL AREA, PHASE-II, CHANDIGARH THROUGH ITS MANAGER
- (2) MANAGER PANCHAYAT BHAWAN, SECTOR 18, CHANDIGARH
- (3) DIRECTOR HOSPITALITY-CUM-CHIEF EXECUTIVE OFFICER, PANCHAYAT BAWAN SOCIETY CHANDIGARH (Management)

## AWARD

1. Lal Chand, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

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2. Briefly stated the averments of claim statement are that the workman was appointed by the Management No. 2 & 3 in the year 2009 as Electrician-cum-Plumber on the performance of the workman. During the entire service period, the workman discharged his duties with utmost honesty, sincerity, full dedication and devotion. On 01.07.2014 management No.1 / Secure Guard Services was given award of contract and the workman was retained by management No.1. The management No.1 is a contractor and has taken the

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tender to provide the Security Guards and manpower services through the managements No.2 & 3. The workman was deployed with management No.2. The workman was working under the supervision & control management No.3. The management No.2 has been assigning the duties to the workman from time to time. The workman was covered under the ESI scheme and EPF scheme. Vide its letter dated 18.07.2018 the management has terminated the services of the workman alleging false and fabricated allegations. Earlier to the issuance of termination letter dated 18.07.2018, the workman was pressurised mentally and physically by the officials / officers of the company to submit resignation of the workman to the company. But the workman refused to submit the resignation without any notice. The management issued termination letter dated 18.07.2018. The workman has to his credit services of more than 240 days i.e. more than 8 years on the date of termination. The work for which the workman was appointed still exists with the management and is of such a nature without which the function of the management is quite impossible. The management instead of regularising the services of the workman, preferred to terminate his services that too without following the statutory provisions which regulate the termination of the workman. Earlier to issuance of termination letter the management No.1 has issued letter dated 09.07.2018 on false & frivolous ground for not performing his duties in the right prospectus. The management has failed to disclose when and where the workman has not performed his duties properly. The management has failed to disclose with whom, the workman has mis-conducted. Whether the workman has performed his duties with full honesty, sincerity and dedication till the date of termination. On 13.07.2018 the workman filed his reply denying all the allegations levelled against him. The management had misused his powers and for making just for formality issued the letter dated 16.07.2018 with a subject "notice to dispense with services'. However, the Manager here also failed to disclose when and where the workman was found not performing his duties. The management declared the reply submitted by the workman as un-satisfactory. The management has factually and truly issued the notices which were based on the facts disclosed by the workman in his reply dated 13.07.2018. Through this letter dated 16.07.2018 the services of the workman were dispensed with by the closing hours of 20.08.2018 but again the termination letter dated 18.07.2018 was issued to the workman. Thereafter, the workman submitted his reply denying all the allegations levelled upon him and also submitted that he was working since 2009 with the management and the management has no complaint towards the workman. The workman has also shown his apprehension and submitted that it is only on / after 07.06.2018 when the FIR No.175 dated 07.06.2018 has been registered against Mr. Vinod Kumar Yadav under Section 376(2) IPC at Police Station, Sector 19, Chandigarh, who was working as a Mess In-charge in the Panchayat Bhawan, Sector 18, Chandigarh on the complaint of Miss Kusum, who is also working as a Housekeeping in Panchayat Bhawan, Sector 18, Chandigarh. The workman further submitted that the Manager Ram Achal Yadav is real Uncle of Vinod Kumar Yadav, who is the accused in the aforesaid FIR. Manager Ram Achal Yadav thinks that workman Lal Chand is helping Miss Kusum in her case against his nephew and also pressurised the complainant Miss Kusum and workman Lal Chand to compromise the matter. The workman in his detailed reply also disclosed the incident when on 10.07.2018 Ranvir Yadav the contractor, Panchayat Bhawan called the workman, Miss Kusum and her mother in his office and started pressurising to compromise the matter with Vinod Kumar and also offered money for compromise. Thereafter, Miss Kusum refused to do so. Then, the contractor threatened the workman to face dire consequences and also threatened to remove from the job. To remove their frustration the management has issued false and frivolous notice without disclosing the cause or action or incident. The management has also issued notices to other three persons namely Surinder Singh, Kanya Wati and Kusum, who are witnesses and complainant in the said FIR and are working with the management. At the time of termination of services of the workman, the managements did not comply with the statutory provisions of the ID Act in as much as he was neither offered nor paid any retrenchment compensation. At the time of termination, salary of the workman for the month of June and 18 days of July, 2018 @ ₹18,934/- per month i.e. totalling of 48 days including all the allowances etc. was not paid to the workman which is also due with the management. The management issued notices did not 09.07.2018, 16.07.2018 and 18.07.2018 with a malafide intention. The workman has given reply to the notices issued by the management. Hence, notices issued were not itself maintainable. No inquiry was conducted. At the time of termination, the workman was being paid ₹18,934/- as monthly wages. The work for which the workman was appointed is still in operation and the workman intends to join the services of the management.

The termination order dated 18.07.2018 vide which the services of the workman were terminated w.e.f. 18.07.2018 is illegal being passed in a highly arbitrary and malafide manner in gross violation of the principles of natural justice and in violation to the statutory provisions of the ID Act and as such liable to be set aside inter-alia on the following grounds :—

- (i) Before terminating the service of the workman, neither any show cause notice nor any charge sheet was issued, what to say of conducting inquiry or affording any opportunity of being heard to the workman. Thus, the termination is in violation of the principles of natural justice.
- (ii) At the time of termination of the services of the workman, neither retrenchment compensation was offered nor paid. Thus, the order of termination is violative of Section 25-F of the ID Act.
- (iii) The work for which the workman was appointed, still exists with the institute and there was no necessity to terminate the services of the workman. Even then his services have been terminated, thus termination is arbitrary.
- (iv) To get the work done which was being done by the workman, the management would certainly appoint other persons in order to adjust persons related to the officers of the management. Thus, the order of termination is tainted with malafide intention.
- (v) The persons juniors to the workman have been retained in service thus termination is in violation of Section 25-G of the ID Act.
- (vi) The order of termination is in gross violation of Articles 14, 16 and 21 of the Constitution of India.
- (vii) The reasons which have been made the basis of termination have no legal force and not tenable in the eyes of law, therefore, termination is illegal.

Previously the workman submitted demand notice to the management and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, the managements had filed their reply to demand notice but the conciliation proceedings failed on 31.10.2018. The dispute could not be resolved due to non-cooperative attitude of the management and accordingly, the Conciliation Officer intimated and apprised the workman the statutory provisions of the ID Act where under the claim before this Court can be filed. Accordingly, this claim petition. Prayer is made that order of termination dated 18.07.2018 may be declared as illegal and workman may be ordered to be reinstated into service of management with all the service benefits including full back wages and continuity of service from the date of her termination, in the interest of justice.

3. On notice, management No.1 filed written reply on 05.03.2019 wherein it is stated that award of contract for manpower was awarded to management No.1 w.e.f. 01.07.2014. Lal Chand, workman came on their pay rolls from 01.07.2014 and not working with them since 2009. It is a matter of record that the workman is covered under ESI and EPF scheme. The services of the workman were dispensed with vide order dated 18.07.2018 after affording full opportunity by giving him notices dated 09.07.2018 and 16.07.2018. The post on which he was working already stands filled so that the work of the department may not suffer. There is no post vacant at present. On account of his non-performance of duties assigned to the workman, he had been advised a number of times to be sincere to his duties but to no effect. His reply dated 13.07.2018 was duly considered on merits and found to be unsatisfactory. His contention that pressure was mounted upon him in the case of Kusum is totally false and not maintainable. Vide letter dated 16.07.2018 it was informed to the workman that it has got no relevancy and is uncalled for. It was informed to him in the said letter that M/s Secure Guard Security & Manpower Services as well as the department where he was deployed, has no concern with it. Keeping in view his reply and gravity of the misconduct, services of the workman were dispensed with by closing hours of 20.08.2018. During the period of notice workman was attached with the registered office of Secure Guard Security & Manpower Services. He was further advised to report their office along with no dues certificate from the department as he was having the item of stock viz tools etc. with him, so that his full & final payment is made to him. Letter in question was received by him on 17.07.2018 but

by 1:30 P.M. on 18.07.2018, he had not reported for duty for joining which was clear cut disobedience of the orders by him. Keeping in view the notices served upon him and for not complying with the orders, his services were dispensed with and he was relieved from the aforesaid date. Finally through registered letter dated 20.07.2018 he was advised to visit the office of management No.1 along with no dues certificates from the department so that his full & final payment of dues is made but to no effect. Till date he has not submitted no due certificate. The post of Electrician stand filled up so as to see that the work of the department was not to suffer. There is no post of Electrician vacant at the present. His dues will be settled on submission of no due certificate by him from the department. In case of termination on account of misconduct and after affording due opportunity, the workman is not entitled for retrenchment compensation. There is no question of junior / senior arises in his case as there was a single post. Orders to dispense with the services is fully valid and as per the position given above. The conciliation proceedings were duly attended and reply was filed before Assistant Labour Commissioner-cum-Conciliation Officer. The conciliation proceedings were closed by the authority and the workman was informed by them vide letter dated 31.10.2018 sent at his address under reference. Prayer is made that the claim statement may be dismissed as the same is not tenable in the eyes of law.

4. Managements No.2 & 3 filed joint written reply on 03.06.2019 wherein it is stated that vide agreement dated 20.12.2017, the management No.1 agreed to provide manpower services i.e. skilled / unskilled to the Director Hospitality-cum-Chief Executive Officer, Panchayat Bhawan, U.T. Chandigarh. Clause 2 of the agreement pertains to obligation of the service provider. With regard to terms of payment, in Clause 3 sub-clause (c) of the agreement it has been specifically stated that the service provider being the employer in relation to persons engaged / employed by him to provide the services under this agreement shall alone be responsible and liable to pay wages / salaries to such persons which in any case shall not be less than DC rates notified / issued from time to time for the category of workers employed by him from time to time or by the State Government and / or any authority constituted by or under any law. He will observe compliance of all relevant labour laws. So far as the discipline among the workers provided by the management No.1 is concerned, in clause 5 sub-clause (d) of the said agreement, it has been specifically mentioned that the service provider alone shall have the right to take disciplinary action against the person(s) who raise any dispute and / or claim whatsoever against the Director Hospitality. The Director Hospitality-cum-Chief Executive Officer, Panchayat Bhawan, U.T. Chandigarh shall under no circumstances have the right to take disciplinary action against any person(s) who raise any dispute and / or claim whatsoever against the Director Hospitality. The Director Hospitality-cum-Chief Executive Officer, Panchayat Bhawan, U.T. Chandigarh shall under no circumstances be deemed or treated as the employer in respect of any persons engaged / employed by the service provider for any purpose whatsoever, nor would The Director Hospitality-cum-Chief Executive Officer, Panchayat Bhawan, U.T. Chandigarh be liable for any claim(s) whatsoever, of any such person(s). Lal Chand was deployed at Panchayat Bhawan, Sector 18, Chandigarh by the different service providers, deployed as Electrician-cum-Plumber from time to time at ALC/DC rates. The workman was assigned for minor repair of Electrical and plumbing faults in the premises of Panchayat Bhawan. The service provider issued notice to Lal Chand vide letter dated 16.07.2018 in which it was mentioned that to explain the position for non-performing the duties assigned to Lal Chand from time to time, vide letter No.SG/SMS/2018/531 dated 09.07.2018 and the reply dated 13.07.2018 submitted by Lal Chand has been considered and found to be unsatisfactory by the service provider. The service provider issued notice to Lal Chand vide letter No.SG/SMS/2018/562-65 dated 16.07.2018 in which it was mentioned that to explain the position for non-performing the duties assigned to Lal Chand from time to time vide letter No.SG/SMS/2018/531 dated 09.07.2018 and the reply dated 13.07.2018 submitted by Lal Chand were found to be unsatisfactory by the service provider. The notice issued to Lal Chand for disobedience to comply with the orders and dispensed his services vide letter No.SG/SMS/2018/570-71 dated 18.07.2018 the services of Lal Chand are dispensed forthwith and stand relieved itself.

5. The workman filed replication to the written reply of management No.1 and separate replication to the join written reply of managements No.2 & 3 wherein the contents of the written reply except admitted facts of the claim statement, are denied as wrong and averments of claim statement are reiterated.



6. From the pleadings following issues are framed vide order dated 05.08.2019 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between managements No. 2 & 3 and workman ? OPM 2 & 3
3. Relief.

7. In evidence workman Lal Chand examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'A1' to Exhibit 'A10' and Mark 'A'.

**Exhibit 'A1'** is photocopy of identity card of Lal Chand issued by Manager, Chandigarh Administration, Panchayat Bhawan, U.T. wherein it is mentioned deployed through Secure Guard & Security Services Pvt. Ltd.

**Exhibit 'A2'** is ESI card of workman bearing IP No.1713250487.

**Exhibit 'A3'** is the letter dated 09.07.2018 issued by management No.1 on its letter pad to Lal Chand relating to the subject of dereliction from the duty.

**Exhibit 'A4'** is reply dated 13.07.2018 to the legal notice dated 09.07.2018 got issued by the workman in reply to notice dated 09.07.2018 having reference No.SG/SMS/2018/531.

**Exhibit 'A5'** is letter dated 16.07.2018 issued by management No.1 to the workman relating to the subject of notice to dispense with services.

**Exhibit 'A6'** is reply dated Nil to the legal notice dated 16.07.2018 got issued by the workman in reply to notice dated 16.07.2018 having reference No. SG/SMS/2018/565-65.

**Exhibit 'A7'** is termination letter dated 17.07.2018 issued by management No.1 to the workman.

**Exhibit 'A8'** is copy of FIR No.0175 dated 07.06.2018, P.S. Sector 19, Chandigarh under Section 376(2) IPC registered against Vinod S/o Daya Ram on the complaint of Kusum D/o Late Ram Singh.

**Exhibit 'A9'** is copy of letter dated 09.07.2018 issued by management No.1 to the workman whereby show cause notice for wilful absence from duty was issued to Kusum by management No.1.

**Exhibit 'A10'** is copy of complaint dated 14.06.2018 filed by Sunil Kumar S/o Panna Singh to the Secretary Hospitality, Chandigarh Administration, Sector 9, Chandigarh.

**Mark 'A'** is copy of letter dated 09.07.2018 issued by management No.1 to the workman whereby show cause notice for wilful absence from duty was issued to Kanya Wati by management No.1.

8. The workman examined AW2 Sunil Kumar resident of House No. 2303, Sector 28-C, Chandigarh, who tendered his affidavit Exhibit 'AW2/A'. On 15.11.2022 Learned Representative for the workman closed the evidence. In this case, the documents were tendered as Exhibit 'A1' to Exhibit 'A10' but due to oversight the documents were numbered as Exhibit 'W1' to Exhibit 'W10'. In order to avoid any ambiguity, the documents are hereinafter referred as Exhibit 'A1' to Exhibit 'A10'.

9. On the other hand, management No.1 examined Parveen Kumar - Manager, Secure Guard Security & Manpower, who tendered his affidavit Exhibit 'MW1/A'.

10. On 03.03.2023 Learned Representative for management No.1 closed evidence.

11. Managements No.2 & 3 examined MW2 Rakesh Kumar - Manager, Panchayat Bhawan-cum-Assistant Director, U.T. Guest House - 2, Hospitality Department, Chandigarh Administration, who tendered his affidavit Exhibit 'MW2/A' along with copy of service agreement dated 20.12.2017 executed between the Administrator of Union Territory Chandigarh through Hospitality-cum-Chief Executive Officer, Panchayat Bhawan, U.T. Chandigarh and M/s Secure Guard Security and Manpower Services vide Exhibit 'M1'. On 02.05.2023 Learned Law Officer for managements No.2 & 3 closed evidence.

12. I have heard arguments of Learned Representatives for parties and Learned Law Officer for managements No.2 & 3 and perused the judicial file. My issue-wise findings are below :—

**Issue No. 2 :**

13. This issue goes to the root of the case, thus this issue is taken up first.

14. Onus to prove this issue is on managements No.2 & 3. The managements No.2 & 3 have denied relationship of employer and employee between managements No.2 & 3 and workman.

15. In view of judgment of Hon<sup>ble</sup> Supreme Court of India reported in **2014(9) SCC 407 titled as Balwant Rai Saluja & Another Versus Air India Limited and Others**, the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia :

- (i) who appoints the workers;
- (ii) who pay the salary / remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

16. In the present case, AW1 Lal Chand when put to cross-examination by managements No.2 & 3 stated that no appointment letter was ever issued by the management No. 2 & 3. AW1 further stated that he was appointed by the management No.1. His services were terminated by management No.1. The workman's own witness AW2 Sunil Kumar when put to cross-examination by managements No.2 & 3 admitted the suggestion as correct that the workman was deployed on outsource basis by M/s Secure Guard on 01.07.2014. AW2 admitted as correct that the workman was neither appointed nor terminated by management No.2 & 3. AW2 admitted as correct that letter dated 18.07.2018 / Exhibit "A7" was issued by Secure Guard Security & Manpower Services i.e. management No.1. MW1 Parveen Kumar (witness of management No.1) in his cross-examination admitted as correct that letter dated 09.07.2018 / Exhibit "W3" was issued by M/s Secure Guard Security & Manpower Services to the workman for not performing of duties. MW1 when put to cross-examination by managements No.2 & 3 stated that workman was deployed as Plumber-cum-Electrician by the management No.1 with management No.3. MW1 admitted as correct that as per the terms & conditions of the agreement, the contractor is responsible for the negligence of the worker deployed through the contractor. MW1 in his cross-examination was further stated that the workman Lal Chand was issued appointment letter by management No.1. The contractor receives the attendance sheet of the workman from the concerned department for the purpose of billing. MW1 admitted as correct that the workman is paid salary by the contractor / management No. 1. MW1 further admitted as correct that EPF and ESI is deducted by the contractor from the salary of the workman which is deposited in the respective EPF and ESI account by the contractor. MW2 Rakesh Kumar when put to cross-examination by management No.1 admitted the suggestion as correct that the workman was issued notice dated 16.07.2018 and a copy of which was also endorsed to management No. 2 & 3. MW2 admitted the suggestion as correct that the workman was issued the notice for the disobedience to comply with the order dated 18.07.2018. MW2 admitted as correct that the action by management No. 1 was taken under the provisions of law and rules against the workman. From the aforesaid version of AW1, AW2, MW1 and MW2 it is duly proved on record that the workman is direct employee of the contractor / management No.1 being engaged and employed by the contractor. It is the contractor, who had been paying salary to the workman. Besides, the show cause notice Exhibit 'A9' and letter of termination

Exhibit 'A5' was issued to the workman by the contractor / management No.1. Moreover, as per condition No.3(c) contract agreement Exhibit 'M1', the service provider being the employer in relation to persons engaged / employed by him to provide the services under this agreement shall alone be responsible and liable to pay wages / salaries to such persons and as per condition No. 3(d) the service provider is responsible to produce the register of wages or register of wages-cum-muster roll of the preceding month along with the bill every month for the verification to the nominated official of the Office of Director Hospitality. In this manner, the ultimate supervision and control of the workman was with the contractor. Consequently, there was no employer-employee relationship between managements No. 2 & 3 and the workman.

17. Accordingly, this issue is decided in favour of managements No. 2 & 3 and against the workman.

**Issue No. 1 :**

18. Onus to prove this issue is on the workman.

19. Under this issue workman Lal Chand examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'A1' to Exhibit 'A10'. For corroboration the workman examined AW2 Sunil Kumar, who vide his affidavit Exhibit 'AW2/A' deposed in verbatim to workman / AW1.

20. On the other hand, management No.1 examined MW1 Parveen Kumar, who vide his affidavit Exhibit 'MW1/A' deposed that he is well conversant with the case of the workman, hence, he can lead evidence to the best of his knowledge and belief in the alleged claim matter of the workman. MW1 is competent to swear the affidavit. He further deposed that the workman came on pay rolls of management No.1 with its client / Director Hospitality-cum-Chief Executive Officer, Panchayat Bhawan, Sector 18, Chandigarh on 01.07.2014. The workman had not provided support services through respondent-management No.1 from 2009 as the workman came on the pay rolls of respondent-management No.2 on 01.07.2014. The workman-applicant had been served letters dated 09.07.2018 and 16.07.2018. He further deposed that his services were dispensed with from the closing hours of 20.08.2018. The workman involved in unwarranted activities in violation of policy of the agency for performing support services on its behalf to the client of the agency for performing support services on its behalf to the client of the agency. Reply of the workman dated 13.07.2018 was duly considered on merits and found quite unsatisfactory and frivolous / concocted with the sole intention to malign the image of the agency. The workman was also called vide letter dated 16.07.2018 but the workman failed to report in the office of respondent-management No.1, on specified date and time. The workman has evidently failed on all fronts and had only fetched disobedience / indiscipline, maligning of the image of Secure Guard Security & Manpower Services (management No.1). The workman had failed to visit the office of respondent-management No.1 for which he was duly bound to join and he has failed to do so. There was no post of Electrician-cum-Plumber vacant with any of the client of respondent-management No.1, hence, respondent-management No.1 could not deploy the applicant-workman on contract. As regards the settlement of pending dues of the workman the same were to be cleared once the workman submits his 'No Due Certificate' in the office of respondent-management No.1 from the office of its client where the workman-applicant had provided support services on behalf of respondent-management No.1.

21. Management No.2 & 3 examined MW2 Rakesh Kumar - Manager, Panchayat Bhawan-cum-Assistant Director, U.T. State Guest House - 2, Hospitality Department, Chandigarh Administration, who vide his affidavit Exhibit 'MW2/A' narrated the entire contents of written statement filed jointly by managements No. 2 & 3. MW2 supported his oral version with document Exhibit 'M1'.

22. From the oral as well documentary evidence led by the parties, it comes out that the workman worked with the department as Electrician-cum-Plumber from 01.06.2012 to February 2013 through JM Manpower outsource agency and thereafter from July 2014 to 17.07.2018 through Secure Guard Security & Manpower. In this regard, MW2 in his cross-examination stated that Lal Chand worked with the department as Electrician-cum-Plumber from 01.06.2012 to February 2013 through JM Manpower outsource agency and

thereafter from July 2014 to 17.07.2018 through Secure Guard Security & Manpower. Admittedly, the workman joined the management No.1 on 01.07.2014. In this regard AW1 in his cross-examination conducted by management No.2 & 3 stated that she was appointed by the management No.1 on 01.07.2014. AW1 in her cross-examination conducted by management No.1 admitted as correct that she was not on pay roll in the year 2009 and joined the management No.1 on 01.07.2014. AW2 in his cross-examination admitted as correct that the workman was deployed on outsource basis by M/s Secure Guards on 01.07.2014.

23. The workman was terminated from service w.e.f. 18.07.2018 vide letter dated 18.07.2018 / Exhibit 'A7' issued by management No.1 to the workman. The workman has challenged the termination order on the ground that before terminating the services of the workman, neither any show cause notice nor any charge sheet was issued. Besides, at the time of termination of the services of the workman, neither retrenchment compensation was offered nor paid. The work for which the workman was appointed, still exists with the institute and there was no necessity to terminate the services of the workman. The persons junior to the workman have been retained in service.

24. On the other hand, management No. 2 & 3 have taken the plea that they have no concern with the termination order, the same being passed by management No. 1. Learned Representative for management No.1 argued that the workman could not provide the services to the entire satisfaction of the principal employer. The workman was advised a number of times to be sincere to his duties but to no effect. The workman was afforded full opportunity vide letter dated 09.07.2018 / Exhibit 'A3'. Letter dated 16.07.2018 / Exhibit 'A5' and letter dated 18.07.2018 / Exhibit 'A7'. The workman was attached with the office of Secure Guard Security & Manpower Services vide letter dated 16.07.2018 but he failed to report in the office of the agency for taking up an alternative assignment. The workman was served with 30 days notice dated 16.07.2018 / Exhibit 'A5' as per the provisions of law / rules and policies of management No. 1. The Manager-cum-Assistant Director, Panchayat Bhawan / MW2 in his cross-examination admitted that verbal complaints were made by him to the service provider and management No.2. He had also admitted that management No.1 has taken action against the workman under the provisions of rules and law.

25. So far issue of notices by the management No.1 before passing the termination order is concerned workman / AW1 in his cross-examination did not deny the fact that he was issued notice by the management No.1, which was also replied by him. In this regard, AW1 when put to cross-examination by management No.2 & 3 stated that his services were terminated by the management No.1 by giving notice and without conducting any inquiry. From the aforesaid version of AW1, it is made out that the workman has not denied the issue of notice to him. AW1 when put to cross-examination by management No.1 stated that it is correct that notice dated 09.07.2018 was issued to him and he has also filed reply to the same. AW1 admitted as correct that he received a letter dated 16.07.2018 and he has filed reply to the same, which is Exhibit 'A6'. The workman in his evidence brought on record letter / notice bearing Ref. No.SG/SMS/2018/531 dated 09.07.2018 vide Exhibit 'A3', and letter / notice Ref. No.SG/SMS/2018/569 dated 18.07.2018 vide Exhibit 'A7'. In order to determine the fact that whether the aforesaid letters provided sufficient opportunity to the workman to explain his position, it is necessary to go through the contents of the above said letters.

26. The contents of letter / notice Exhibit 'A3' are reproduced as below :—

*"It has been brought to our notice that you are not performing in duties a sign to you from time to time in right perspective. You have been advised a number of times to be sincere to your duties but to know effect.*

*Keeping in view your above misconduct your services needs to be dispensed forthwith. However in the interest natural justice you are given an opportunity to explain your position by 16.07.2018. In case you failed to submit the reply within the stipulated period there will be no alternative left with us to dispense with your services and this decision Suo Moto shall be binding upon you."*



The contents of letter / notice Exhibit 'A7' are reproduced as below :—

*"In accordance with letter no. SG/SMS/2018/562-65 dated 16.07.2018, during the period of notice you were attached with the Registered Office of M/s Secure Guard Security & Manpower Services, Plot No.151, Industrial Area, Ph-2, Chandigarh. The letter in question was received by you on 17/07/2018 but by 1:30 PM 18/07/2018 you have not reported for duty. This tantamount to disobedience to comply with the orders.*

*Keeping in view the notice served upon you through aforesaid letter and for not complying with the orders, your services are dispensed forthwith and you stand relieved today itself."*

The workman has filed reply Exhibit 'A4' to letter / notice Exhibit 'A3'. In reply the workman denied the allegations and pleaded that one FIR under Section 376(2) IPC was registered at PS, Sector 19, Chandigarh on the basis of the complaint moved by Kusum against accused Vinod S/o Daya Ram, who was the then Mess Incharge. The workman has alleged that the then Manager, Panchayat Bhawan, namely Ram Achal Yadav is the real Uncle of accused Vinod. The workman and Surinder Singh, Kanya Wati and victim Kusum were the witnesses of complainant in the said FIR. The then Manager Ram Achal Yadav was pressurising the workman and the complainant to compromise the matter and even threatened with dire consequences and to remove the workman from job. On account of aforesaid reasons, the workman was discharged from the services of the management. On the other hand, MW2 witness of managements No.2 & 3 in his cross-examination denied for want of knowledge that the worker Kusum had filed any complaint against Mess Incharge Vinod Kumar Yadav with the allegations of rape or that any FIR was registered on that basis. MW2 further denied for want of knowledge if Vinod Kumar Yadav - Mess Incharge was nephew of then Manager Ram Achal Yadav. However, MW2 denied the suggestion as wrong that the then Manager Ram Achal Yadav due to his enmity has got issued notices to four employees Surinder Singh and others including workman Lal Chand. In the present case, the workman has proved the registration of FIR on the complaint of Kusum against Vinod Kumar but the workman did not produce on record the list of witnesses of the prosecution in the said FIR or challan of said FIR to show that the workman was one of the prosecution witnesses. The workman failed to prove that he was joined into investigation of the said FIR as a prosecution witness by the police. Even copy of statement under Section 161 Cr. PC is not brought into evidence of this case. It is also not proved into evidence that the workman examined himself as a prosecution witness in the trial of FIR Exhibit 'A8'. Moreover, the victim of FIR or any other alleged prosecution witness of the FIR is not examined by the workman to support his plea that the then Manager has any enmity with him due to registration of FIR Exhibit 'A8'. In the absence of the aforesaid documents it cannot be assumed that the then Manager of Panchayat Bhawan had any enmity with the workman.

27. As far as providing opportunity to the workman to explain his position before passing termination order is concerned, the notices Exhibit 'A3' and Exhibit 'A7' are issued on dated 09.07.2018 and 18.07.2018 respectively. There is no document on record showing that managements No.2 & 3 or Incharge Housekeeping, Panchayat Bhawan, Chandigarh has reported any misconduct of the workman to management No.1. MW1 in his cross-examination stated that management No.2 & 3 have never issued any instructions in writing for termination of the workman. MW1 voluntarily stated that instructions were issued to warn the workman for his unsatisfactory work. The version of MW1 that the instructions to warn the workman for his unsatisfactory work were issued, is not substantiated with any documentary evidence, thus the same is not believable. The version of MW2 that the management No.2 had not found the services of the workman to their satisfaction and made verbal complaints to the service provider and the management No.2 is without any basis. Moreover, MW1 in his cross-examination admitted as correct that the letter dated 09.07.2018 / Exhibit 'A3' was issued by M/s Secure Guard Security & Manpower Services to the workman for not performing of duties. MW1 admitted as correct that it is not mentioned in the above said letter Exhibit 'A3' that when / where / which

duty was not performed by the workman. MW1 stated that the department has recommended from time to time to issue notice to the workman but he cannot tell whether the recommendations by the department was oral or in writing. The aforesaid version of MW1 would support the plea of the workman that the notice / Exhibit 'A3' issued to him was without any basis.

28. The management No.1 has issued letter / notice Ref. No.SG/SMS/2018/562-65 dated 16.07.2018 / Exhibit 'A5' to the workman whereby the workman was informed that reply dated 13.07.2018 submitted by him has been considered and found unsatisfactory and his services were dispensed by closing hours of 20.08.2018 and during the period of notice he was attached with the registered office of M/s Secure Guard Security & Manpower Services. Thereafter, management issued another letter Ref. No.SG/SMS/2018/569 dated 18.07.2018 / Exhibit 'A7' to the workman wherein it is mentioned that during the period of notice he was attached with the registered office of M/s Secure Guard Security & Manpower Services, Plot No.151, Industrial Area, Phase 2, Chandigarh vide letter No.SG/SMS/2018/562-65 dated 16.07.2018 which was received by the workman on 17.07.2018 but by 1:30 P.M. of 18.07.2018 the workman did not report for duty which tantamount to disobedience to comply with the orders. Therefore, for non-compliance of order, the services of the workman were dispensed with w.e.f. 18.07.2018. From the contents of notice dated 18.07.2018 / Exhibit 'A7' it is duly proved on record that the services of the workman are terminated before completion of notice period of one month. As per letter dated 16.07.2018 / Exhibit 'A5' the notice period was up to 20.08.2018 but the services of the workman are terminated on 18.07.2018 after 1 day of issuance of letter dated 16.07.2018 i.e. much prior to the completion of 1 month's notice. Besides, neither the notice pay is offered nor paid to the workman. Thus, termination order Exhibit 'A7' is in violation of Section 25-F of the ID Act. Consequently, the termination order dated 18.07.2018 / Exhibit 'A7' is hereby set aside.

29. The contract agreement between the management No.1 and managements No. 2 & 3 was executed lastly on 20.12.2017 vide Exhibit 'M1', which will remain extended for further two years. Thus, the contract between management No.1 and managements No. 2 & 3 expired on 20.12.2020. Under these circumstances, management No.1 is held liable to pay lump sum compensation in the sum of ₹ 50,000/-. Relief qua management No. 2 & 3 is declined.

30. Accordingly, this issue is decided in favour of the workman and against the management No.1.

**Relief :**

31. In the view of foregoing finding on the issues above, the present industrial dispute is partly allowed. Management No.1 is held liable to pay lump sum compensation in the sum of ₹ 50,000/-. Relief qua management No. 2 & 3 is declined. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 02.05.2023.

(JAGDEEP KAUR VIRK) ,  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 10th July 2023

**No. 13/1/9984-HII(2)-2023/9635.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 92/2020 dated 12.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJESH KUMAR DHIR S/O LATE SH. TRI BHUWAN DHIR, R/O H.NO.670,  
SECTOR 41-A, CHANDGIARH (Workman)

AND

- (1) KIRLOSKAR TECHNOLOGIES (P) LTD., FIRST FLOOR, B-58, DEFENCE COLONY, BHISHAM PITAMAH MARG, NEW DELHI-110024 THROUGH ITS MANAGING DIRECTOR
- (2) MANAGING DIRECTOR, KIRLOSKAR TECHNOLOGIES (P) LTD. FIRST FLOOR, B-58, DEFENCE COLONY, BHISHAM PITAMAH MARG, NEW DELHI-110024 (Management)

**AWARD**

1. Rajesh Kumar Dhir, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was selected and appointed long time back by the management especially by management No. 2 as Service Engineer. The workman is not only a regular and confirmed employee of the management but from time to time by the dint of his hard work he has earned re-designation / promotion as Senior Service Engineer, Area Manager and lastly as Regional Manager. As Service Engineer the workman has always performed technical and manual duties and even after his re-designation / promotion, except change of designations, his pre-dominant nature of work / duties being technical and manual remained intact. The workman never performed any managerial or supervisory functions. In fact workman has always performed duties of workman within the meaning of the ID Act. The management is a big concern in which more than 100 (in fact approximately about 250) workmen were always employed on an average per working day for the preceding 12 months, therefore is an Industrial Establishment within the meaning of ID Act. As per the disclosure of the management it has prepared, Employees Service Rules Manual 2016, allegedly to govern service condition of employees working under it but has failed to get these rules certified within the statutory provisions of Section 3 to 5 of the ID Act, therefore same has neither authenticity nor applicability whereas in its absence within the provisions of *ibid* Act, model standing orders are applicable. Right from the date of appointment to date i.e. for about long 25 years, the workman has always performed his technical and manual duties to the entire satisfaction of the management. In the evening of service life of the workman as now he is 55 years of age, *vide* letter dated 08.05.2020 issued by President - Radiotherapy, a two months' notice is served upon him mandating that on its expiry as on 07.07.2020 his services shall stand dispense with / terminated. The workman *vide* his appeal dated 14.05.2020 addressed to management No. 2 requested for withdrawal of order dated 08.05.2020 but instead of addressee may take any decision thereon, Manager HR *vide* dated 16.05.2020 has intimated the workman that if no communication is made to the workman within next two weeks by the competent authority in respect of his appeal, then it would mean its rejection and that his services shall stand discontinued w.e.f. 07.07.2020. Till date the workman has not been sent any communication informing him its rejection by management No. 2. Thus, it is manifest that a service appeal preferred to so called competent authority / management No. 2 is rejected in an illegal manner

by an in-competent authority i.e. Manager (HR) which is even sub-ordinate to President, who has passed impugned order dated 08.05.2020. Thereafter the workman served upon the management a legal notice dated 04.06.2020. Reply thereto by management is dated 18.06.2020. In this reply the management clearly steadfast that as no communication is sent to the workman within two weeks from the date of his appeal, therefore, his appeal is deemed to be rejected and his services will stand discontinued effective from 07.07.2020. The action of termination of services of the workman effective from 07.07.2020 is none-the-less but illegal and the workman is entitled to be reinstated into service with all consequential and attendant benefits, continuity of service with full back wages / perks / allowances during period of his forced idleness, inter alia among other, the following grounds :—

- (i) Discontinuation / termination of the services of the workman is none-the-less but a retrenchment that too without following any of the provisions of Section 25-N or 25-F of the ID Act. The workman is neither paid retrenchment compensation nor the management obtained prior permission of appropriate Government / authority. Besides, there is a complete violation of Section 25-G of the ID Act as junior to the workman are retained.
- (ii) The workman is a confirmed employee of the management. Therefore, his services do not deserve to be discontinued / retrenched with the help of non-existent Service Rules 2016 or otherwise simply by issuance of two months notice. Plethora of judgments of the Hon'ble Apex Court of the land deprecates termination of services of persons in this manner. As per mandate of the provisions of the ID Act, any service rule, contract etc. to the contrary to ID Act have to be ignored.
- (iii) In the absence of Service Rule 2016, Model Standing Orders are applicable but none of the provisions thereof are resorted to in the case in hand.
- (iv) The workman has rendered unblemished service of 25 years with the management and since is now 55 years of age, has become unfit / overage to procure any other job
- (v) Dis-continuation of his services during situation of pandemic due to COVID-19 is infringement of guidelines issued by Government of India, which refrained all employers to dispense with the services of anyone because of alleged loss to the company during this period.
- (vi) In the impugned order / notice two reasons are assigned for discontinuation from service. First, change of product profile of the company. Second, loss of business in the segment which is being handled by the workman. These allegations are patently wrong, illegal, violates principles of natural justice, biased and stigmatic especially after his unblemished service of about 25 years.
- (vii) So far first reason is concerned, it is pointed out that all work profiles of the company have not been changed and only due to change in one of the work profile, agency and that too for which the workman is not at all responsible, he cannot be punished for that. Abundant work relating to his job profile is still available in the State of Punjab, Himachal, J&K, Rajasthan but instead of locating the same to the workman he is thrown out of service. Further, no other employee of the management company has been served with such notice and only workman has been victimised, proves that reason so assigned to terminate his services in fact are sham / non-existent.
- (viii) So far second reason regarding loss of business in the segment being handled by the workman is concerned, the same too is totally incorrect, stigmatic and biased against him. The alleged loss, if any, is not attributed to him. There are no details provided. Such allegations, at the most construe misconduct and that on the said basis services of the workman cannot be terminated except after following procedure enshrined in Model Standing Orders. Hence, the notice of cessation containing such stigmatic allegations without following due process of law is not permissible, thus is liable to be set aside / withdrawn with all consequential benefits.



- (ix) The workman is discriminated because no other employee except him has been given such notice due to reasons mentioned therein. In fact the management / company is not suffering any loss. The workman is victimised due to *malafide* intentions of the present Head of the Department just due to pending payment issue (as orally disclosed to him) at Bikaner and Shimla which is also due to Government functioning and not due to any default of the workman. Instead of rewarding him for his excellent service carrier, the management is pushing him at this stage of his carrier by levelling false allegation of loss of business without providing him opportunity to defend, without conducting regular \ inquiry and in violation of Model Standing Orders.
- (x) The impugned notice dated 08.05.2020 and letter dated 14.05.2020 are grossly illegal, arbitrary, unconstitutional and unjust. The departmental appeal against impugned decision is statutory and fundamental right of an employee whereas tenor of letter dated 14.05.2020 is clearly biased and illegal from which it is manifest that a service appeal preferred to party No.2 is rejected in an illegal manner by an authority, which is even subordinate to President, who has passed punishment order dated 08.05.2020.
- (xi) The services of the workman are terminated not by appointment authority, which is always a punishing authority but by lower authority.
- (xii) The workman is not gainfully employed w.e.f. the date of termination of his services till date. Prayer is made that the industrial dispute reference may be answered in favour of the workman and against the management to declare that impugned order of termination of services of the workman is illegal and to order his reinstatement in service with continuity of service and full back wages along with all perks / allowances as if impugned order was never into existence.

3. On notice management contested the claim statement by filing written reply dated 26.02.2021 filed on 16.04.2021, wherein it is stated that the reply on behalf of the management is filed through Mr. Ram Chander Sah S/o Late Ram Bilas Sah, who has been appointed as authorised representative *vide* order dated 04.07.2019 issued by the management-company. Further, preliminary objections are raised on the ground that the present claim statement allegedly filed under the provisions of the ID Act is not maintainable since the applicant does not fall within the category of 'workman' as defined in Section 2(s) of the ID Act. The applicant was working as Regional Manager - Services with the managements which certainly would not fall within the definition of 'workman'. The applicant had been performing the supervisory and administrative functions in his capacity as Regional Manager - Services and thus he cannot be bracketed in the definition of the 'workman'. The applicant was receiving handsome salary ₹ 20,35,762/- per annum w.e.f. 01.04.2018, which is reflected from his letter of increment issued to him. The same would also show that the applicant was receiving salary in the tune of ₹ 1,43,870/- while his CTC ₹ 1,69,647/-. Thus, the applicant was clearly getting salary much higher than prescribed in the ID Act, to invoke its jurisdiction and the present claim statement is liable to be rejected on this short score only. A valid notice dated 08.05.2020 for cessation of service of the applicant was served upon him stating the reasons for such cessation. It was duly informed to the applicant that cessation is carried out because of the change in product profile of the company and loss of business in the segment being handled by him at relevant time. The informal discussions were being held with the applicant since December 2019 on grim business situation in his segment. The applicant was given a clear two months' notice as per Rules of the company. It was clearly stipulated in the notice dated 08.05.2020 that it may not be treated as an adverse reflection of the services tendered by the applicant and thus, there is no question of any stigma attached to cessation of his services. The cessation of services of the applicant was perfectly legal, valid and does not suffer any infirmity whatsoever. The applicant has been paid his entire salary and other dues upon the relieving which came into effect from 07.07.2020 i.e. on completion of two months' notice period, which was served on 08.05.2020. However, his salary for the month of June and 1st to 7th July is pending and the same would be handed upon full & final (F&F) settlement, which will be done on receipt of complete hand over from the applicant's end. The present claim statement is an abuse of process of law and has been filed as a pressure tactic to take him back into service. The company has taken a conscious decision to dispense with the services

of the applicant in accordance with applicable Rules and there has been no violation of any provisions of the ID Act. The applicant has no cause of action to file and maintain the present claim statement since the applicant has already crossed the age of 54 years and his services were no more required in the over all interest of the company. The managements have taken conscious decision to curtail expenses in non-performing divisions in the best interest of the company and the services of the applicant were dispensed with as a consequence thereof. The profitability and sustainability call to continue the business is exclusively in the domain and control of the management and the applicant cannot dictate his terms to the management. The services of the applicant are governed by the Employee Service Rules Manual dated 01.07.2016 as per which services of any employee could be terminated by giving one month's notice and there would be no redressal to termination.

The said notice period was made two months vide amendment dated 27.07.2017. The service manual and the amendment carried out were duly informed to all the employees including applicant *vide* emails which were duly received. In fact, the signed copy of service manual showing acknowledgment by the application was duly received in the office of management. The applicant cannot allege that he was not aware of the service rules or that his services have been terminated arbitrarily. It is settled law that the contractual service can be terminated by the process which is duly followed in the present case. As per the records of the company, the applicant was granted Grade X3 which is issued at managerial profiles. Admittedly, the applicant was not covered under ESI and Bonus Act which further strengthen the case that applicant does not fall under the category of 'workman' as defined under ID Act. Moreover, the applicant was reimbursed for his professional development and attire, which is provided only to managerial profile. The applicant was sent to attend the course on PHUBUS / AXSIM Simulator Service at MecaSim Training Centre in France from 29.06.2009 to 03.07.2009. The applicant was also sent to Canada for Cobalt Product Training in July 2011 and to Hungry in 2003 for Gamma Camera Training. Thus, it could be easily said that the applicant was having a managerial profile and cannot claim himself to be a 'workman' and invoke the jurisdiction under the ID Act. There are various other instances to show that he was acting in supervisory / administrative capacity viz. writing letters to customers regarding sales of machines after attending purchase meeting, written letters related to CMC proposals, issuing invoices and delivery challan etc. A workman would never have been entrusted with such responsibilities.

4. In parawise reply, it is stated that the applicant was appointed as Territory Support Engineer on 17.06.2000. Thereafter, he was promoted as Area Manager - Services on 09.04.2009 and lastly promoted as Regional Manager - Services on 18.05.2013. Thus, all the allegations of *malafide* raised by the applicant in his claim statement fall flat since ever since his appointment in the year 2000 he has been consistently rewarded for his services but when the situation demanded, he was removed as per rules and following the principles of natural justice. The workman profile of the applicant as Regional Manager - Services was as under :—

**Installation :** Supporting sales and application activities like demonstration, evaluation and installation of high-tech medical equipment.

**Service Support :** Responsible for managing periodic maintenance services, timely resolution for equipment malfunction, troubleshooting and repair of complex electronic and electromechanical diagnostic equipment and site service.

**Training :** Training customer on advanced equipment operation, maintenance procedures and process related to operation of equipment.

**Contract Management & Spare Sales Forecasting :** Responsible for acquisition and management of annual maintenance and comprehensive maintenance contracts and forecasting spare figures for his territory.

**Key Account / Customer Relationship Management :** Responsible for building and managing key accounts for the Company as well as building and strengthening customer ties by timely follow-up and support to the customers.

**Net Sales / Collections :** Responsible for the net sales and collections from the region and taking action to build on it further.

The work profile submitted above would clearly establish that the applicant would not fall in the category of 'workman'. It is further stated that the applicant in his role as Regional Manager - Series was holding important managerial and supervisory functions which are part of his job profile. The applicant does not fall within the definition of 'workman' by any stretch of imagination as per the definition contained in Section 2(s) of the ID Act. It is a matter of record the management is a big concern and is an "industrial establishment within the meaning of ID Act. The Employees' Service Rules Manual 2016 framed by the management company has been lawfully framed to govern the service conditions of the employees and are as good as any Model Standing Orders. It is denied that the applicant had performed technical and manual duties. In fact the applicant who was lastly posted as Regional Manager - Services had been performing supervisory and managerial functions assigned to him. The applicant was given a clear two months' notice as per Rules of the company. It was clearly stipulated in notice dated 08.05.2020 that it may not be treated as an adverse reflection of the services rendered by the applicant and thus, there is no question of any stigma attached to cessation of his services. The appeal-cum-representation dated 14.05.2020 was received by the management and the same was duly responded *vide* letter dated 16.05.2020 stating therein that the appeal has been forwarded to the Managing Director and unless the same is replied to, the same be deemed to be rejected within the next 2 weeks and the services of the applicant shall stand terminated w.e.f. 07.07.2020. The appellate authority did not find any merit in the appeal dated 14.05.2020 and the same was filed accordingly. The applicant since did not receive any reply within two weeks, thus as per the deeming clause in communication dated 16.05.2020, the termination of services of the applicant would come into effect w.e.f. 07.07.2020. The Manager HR had only informed the applicant about the status of his appeal and no rejection was ordered by her. The appeal was filed by the competent authority in accordance with rules. The legal notice dated 04.06.2020 was duly replied *vide* letter dated 18.06.2020 stating all the facts. Further, similar stand is taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be rejected being devoid of any merits.

5. The workman filed rejoinder wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed *vide* order dated 20.09.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether Shri Rajinder Kumar Dhir is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Relief.

7. In evidence, the workman Rajesh Kumar Dhir examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with carbon copies i.e. service reports of the workman from year 2013 to 2019 *vide* Exhibit 'W1' to Exhibit 'W52', original documents i.e. Termination letter dated 08.05.2020 *vide* Exhibit 'W53', Departmental Appeal dated 14.05.2020 *vide* Exhibit 'W54', Order dated 16.05.2020 *vide* which appeal of the workman was rejected is Exhibit 'W55', Legal notice dated 04.06.2020 *vide* Exhibit 'W56', reply dated 18.06.2020 to the legal notice *vide* Exhibit 'W57', instructions dated 20.03.2020 and 23.03.2020 downloaded from the website *vide* Exhibit 'W58' and Exhibit 'W59' respectively and e-mail record downloaded from the website *vide* Exhibit 'W60'.

8. It is pertinent to mention here that during cross-examination of MW1 recorded on 28.03.2023 Learned Representative for the workman had put documents Exhibit 'WX' and Exhibit 'WY' to the witness. Exhibit 'WX' is copy of letter dated 30.09.2020 issued by the Managing Director of Kirloskar Theratronics (P) Ltd. and Exhibit 'WY' is the appointment letter dated 16.08.2000 issued by the Managing Director, Kirloskar Theratronics (P) Ltd. to Rajesh Kumar Dhir whereby he was appointed on the staff of Kirloskar Theratronics (P) Ltd. effective June 17, 2000 as Territory Support Engineer. Besides, on request of workman, MW1 in his

remaining cross-examination recorded on 12.04.2023 brought into evidence appointment letters of Mr. D. Sasi Shekhar dated 11.09.2003, Mr. Sandeep Yadav dated 24.07.2008, Mr. Kailash Ch. Parida dated 16.10.2006 and Mr. Saumitra S. Mannikar dated 03.01.2012 vide Exhibit 'WX/1' to Exhibit 'WX/4' respectively.

9. On 03.02.2023 the workman closed his evidence in affirmative.

10. On the other hand, management examined Ram Chander Sah - Manager (Commercial) as MW1, who tendered his affidavit Exhibit 'MW1/A' along with copy of authority letter dated 04.07.2019 issued by Managing Director, Kirloskar Technologies Pvt. Ltd. vide Exhibit 'M1', letter dated 12.09.2018 showing monthly CTC paid to the workman vide Exhibit 'M2' and copy of Employee Service Rules Manual dated 01.07.2016 of the management vide Exhibit 'M3'.

11. On 03.05.2023 Learned Representative for the management closed the evidence.

12. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

#### Issue No. 2 :

13. This issue goes to the root of the case, thus taken up first. Onus to prove this issue is on the management.

14. Learned Representative for the management contended that the applicant-workman does not fall within the category of 'workman' as defined in Section 2(s) of the ID Act. The applicant-workman was working as Regional Manager - Services with the management and was performing supervisory and administrative functions. Besides, the applicant-workman was receiving handsome salary of ₹ 20,35,762/- per annum w.e.f. 01.04.2018 as shown in letter dated 12.09.2018 / Exhibit 'M2'. As per letter of increment / Exhibit 'M2' the monthly CTC of applicant-workman was revised to ₹ 1,69,647/- w.e.f. 1st April, 2018. Much stress is laid upon the fact by Learned Representative for the management that since the applicant-workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act, therefore, the present claim statement / industrial dispute reference is not maintainable.

15. On the other hand, it is argued by Learned Representative for the workman that within the scope and provisions of ID Act, designation / post and even the salary drawn by an employee is irrelevant. The only relevant factor is pre-dominant nature of duties performed by said employee to determine whether said person falls within the ambit of 'workman' or not. As a Service Engineer, the applicant-workman has always performed technical and manual duties and even after his re-designation / promotions, except change of designation his pre-dominant nature of work / duties being technical and manual remained intact. He never performed any managerial or supervisory functions and in fact applicant-workman has always performed duties of a 'workman' with the meaning of the ID Act. To support his arguments Learned Representative for the workman referred the judgment reported in **2019(3) SCT 241, P&H titled as Palvinder Singh Versus Presiding Officer, Labour Court - I, Gurgaon & Another**, wherein it is held that under Section 2(s) of the ID Act, the workman working as Supervisor would not mean that he was working in managerial capacity. The management had to produce evidence to show duties assigned. Merely because workman is to supervise would not exclude him from definition of 'workman'. Learned Representative for the workman also referred judgment reported in **1993(1) SCT 691, P&H titled as M/s CaronaSahu Co. Ltd. Versus Presiding Officer, Labour Court, Jaladhar** wherein it is held that mere designation of the post held by an employee is not the only determining factor as to whether he is a 'workman' or not. Main and dominant nature of duties performed by the employee would be the determining factor. Learned Representative for the workman referred another judgment reported in **2006(4) SCT 1 SC titled as Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** wherein Hon'ble Supreme Court in para 11 to 13 held as below :—

*"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations."*



12. *Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.*

13. *The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

*"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....."*

*A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.*

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."*

The judgments (supra) referred by Learned Representative for the workman are applicable to the facts of the present case, accordingly mere description of post or designation is not material to determine whether the workman was performing managerial or administrative duties. It is the nature of the duties performed by a workman which determine whether he falls within the definition of a 'workman' or not under the ID Act. In the present case, workman / AW1 in his claim statement and testimony vide Exhibit 'AW1/A' has taken plea that he always performed technical and manual duties and even after his re-designation, except change of designations, his pre-dominant nature of work / duties being technical and manual remained intact and he never performed any managerial or supervisory functions. The management's witness MW1 when put to cross-examination stated that the official duty of workman was sales support, application like providing demonstration of medical equipment, providing annual maintenance contract, comprehensive maintenance contract, training to customers on operation of the equipment, collecting payment from the customer on account of sales and service, providing spare parts budget, negotiations with customers for sale of equipment, submitting quotations of spare parts and submitting annual maintenance contract proposal. MW1 admitted as correct that the duty of workman was to install high end instruments, to service the instruments and to replace spare parts. MW1 admitted as correct that the workman used to install high end instruments and for that purpose he used to take help of other employees / engineers from other branches of Head Office. MW1 admitted as correct that company used to take annual maintenance contract from different hospitals and that the workman used to deal service of the instruments in his region. Wherever the services of the workman throughout India were needed, he was deputed to rectify the snag in the instruments or to install the instruments. MW1 admitted as correct that it was the duty of the workman to collect money from the customer after installing the instrument or replacement of the spare parts of the machines. MW1 admitted as correct that after installing the medical equipment / machines it was the duty of the workman to guide the customer how to operate the said machine. MW1

admitted as correct that none was subordinate to the workman. MW1 voluntarily stated that other Engineers as and when required used to help the workman in performance of his duties i.e. installation of medical equipment / machines and replacement of spare parts. MW1 admitted as correct that the workman was not competent either to sanction leave of anyone or to recommend or to take disciplinary action against anyone. From the aforesaid version of MW1, the plea taken by the workman that he was performing technical and manual duties stand duly proved. Admittedly, the workman was not competent to sanction leave to any employee of the management or to take or recommend any disciplinary action against any of the employee of the workman accompanied with the fact that none was subordinate to the workman, therefore, the workman was not performing any of his duties in managerial or administrative capacity. To squarely fall within the exception to Section 2(s) of the ID Act, the person must be (a) employed in a supervisory capacity; (b) draw more than INR 10,000 as wages; and (c) primarily perform the functions of managerial nature. The above said ingredients must co-exist to exclude a person from the definition of 'workman' as defined in Section 2(s) of the ID Act. As discussed above, the management has failed to prove that the applicant-workman was discharging any managerial, administrative or supervisory functions, therefore, only on account of monthly salary drawn by the applicant-workman, exception to Section 2(s) of the ID Act is not attracted. Consequently, in view of the nature of the duties performed by the workman, he falls within the definition of the 'workman' as defined under Section 2(s) of the ID Act.

16. Accordingly, this issue is proved against the management and in favour of the workman.

**Issue No. 1 :**

17. Onus to prove this issue is on the workman.

18. Under this issue, the workman Rajesh Kumar Dhir examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto (which are not reproduced here for the sake of brevity). AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W60'. Learned Representative for the workman also referred documents Exhibit 'WX', Exhibit 'WY' and Exhibit 'WX/1' to Exhibit 'WX/4'.

19. On the other hand, management examined MW1 Ram Chander Sah - Manager Commercial, Kirloskar Technologies Pvt. Ltd., who tendered his affidavit Exhibit 'MW1/A' wherein he has deposed all the material contents of the written statement and supported his oral version with documents Exhibit 'M1' to Exhibit 'M3'.

20. From the oral as well as documentary evidence led by the parties, it comes out that admittedly the workman was selected and appointed by the management as Service Engineer. The specific date of initial appointment of the workman is not mentioned in the claim statement. As per appointment letter dated 16.08.2000 / Exhibit 'WY' Kirloskar Theratronics (P) Ltd. appointed the workman w.e.f. 17.06.2000 as Territory Support Engineer. MW1 in his cross-examination admitted as correct earlier the present workman was working with Mysore Kirloskar Limited, earlier entity of the management. MW1 voluntarily stated that this entity was wind-up. Again said he does not have any record with him with regard to it. MW1 further admitted as correct that thereafter most of the employees earlier working with Mysore Kirloskar were absorbed in Kirloskar Theratronics Ltd. MW1 admitted as correct that the workman was appointed in Kirloskar Theratronics Pvt. Ltd. in the year 2000. In the year 1995 the name of the company in which he (deponent) was working, was Kirloskar Theratronics Pvt. Ltd. In the year 2008 the name of said company was changed to Kirloskar Technologies Pvt. Ltd. Mysore Kirloskar was parent company of Kirloskar Theratronics Pvt. Ltd.

21. The dispute between the parties is confined with regard to termination of the workman. Admittedly, the services of the workman were terminated on 07.07.2020 by issuing two months' prior notice dated 08.05.2020 for cessation / discontinuation of the services of Rajesh Kumar Dhir working as Regional Manager - Services with Kirloskar Technologies Pvt. Ltd. (KTPL). The appeal-cum-representation in respect of notice dated 08.05.2020 issued for cessation / discontinuation of service was preferred by the workman on 14.05.2020 *vide* Exhibit 'W54' to which management replied on dated 16.05.2020 *vide* Exhibit 'W55' in which it was stated that

the company shall discontinue the services w.e.f. 07.07.2020, if the workman do not receive any further communication in writing pertaining to withdrawal of the notice dated 08.05.2020 within next two weeks and the letter dated 14.05.2020 may *ipso-facto* be treated to be rejected at the end of the competent authority, in case of any non-communication from the company. In the present case, it is not the case of the management that it had sent any communication to the workman within two months from appeal / representation dated 14.05.2020. Therefore, the presumption is that appeal-cum-representation dated 14.05.2020 was declined by the management.

22. There is no dispute with regard to the fact that the workman has worked for 240 days in 12 calendar months preceding his termination (the services of the workman were terminated on 07.07.2020). Learned Representative for the workman has argued that in para 3 of the claim statement the workman has specifically pleaded that the management is a big concern, in which more than 100 (in fact approximately about 250) workmen were always employed on an average per working day for the preceding 12 months, therefore the management is an establishment within the meaning of ID Act. On the other hand, the management in its written statement in reply to para 3 of claim statement stated that the contents of para 3 of claim statement are matter of record. From the aforesaid plea taken by the management, it is duly proved on record that the fact pleaded by the workman in para 3 of its claim statement is deemed to be admitted by the management being not specifically denied. Accordingly, since the workman has worked for 240 days in 12 calendar months preceding 07.07.2020 accompanied with the fact that during said period the number of employees working with the management were more than 100, thus Section 25-N of the ID Act stands attracted, which incorporates certain conditions precedent to the passing of termination order. For better appreciation Section 25-N of the ID Act is reproduced as below :—

**"25N. Conditions precedent to retrenchment of workmen -**

- (1) *No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,*
- (a) *the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
  - (b) *the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.*
- (2) *An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.*
- (3) *Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.*
- (4) *Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date*

*on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.*

*(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.*

*(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:*

*Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.*

*(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.*

*(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.*

*(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under, sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."*

By virtue of aforesaid provisions of law, the management was required to give three months' notice in writing indicating the reasons for retrenchment. In the present case, it is own case of the management only two months' prior notice was issued on 08.05.2020 for cessation of services of the workman with the management, which will end on 07.07.2020. In this manner, the management has failed to comply with the provisions of Section 25-N of the ID Act.

23. Learned Representative for the workman argued that the alleged termination of services was due to change in product profile of the company and loss of business in the segment, the workman was handling at that time, therefore it was not retrenchment within the meaning of Section 2(oo) of the ID Act. As per Section 2(oo)(bb) of the ID Act retrenchment means the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under stipulation on that behalf.

24. In the present case, the management did not prove into evidence any document to show loss of business in the segment, workman was handling, therefore Section 2(oo)(bb) of the ID Act does not apply.

25. If for the sake of arguments it is assumed that number of workmen working with the management during 12 months in a calendar year prior to termination of the services of the workman, was less



than 100, in that situation also the management was required to comply with Section 25-F of the ID Act which also incorporates conditions precedent to retrenchment of workmen. Section 25-F of the ID Act is reproduced as below :—

**"25F. Conditions precedent to retrenchment of workmen -** *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until*

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

By virtue of the aforesaid provision of law, although the management had issued two months' prior notice in writing indicating the reasons for retrenchment but at the time of retrenchment, the compensation as required under Section 25-F(b) of the ID Act has not been paid, which amounts to violation of Section 25-F of the ID Act.

26. In view of the reasons recorded above, termination of services of the workman on the basis of notice of cessation Exhibit 'W53' is illegal and is hereby set aside. At the time of recording testimony (examination-in-chief recorded on 18.10.2022) the age of the workman was about 57 years. Till date the workman has not attained the age of superannuation. The management's witness MW1 Ram Chander Sah - Manager Commercial when examined on 09.03.2023 was aged about 59 years and when put to cross-examination on 28.03.2023 stated that presently he is working as Manager Commercial in the management. The aforesaid version of MW1 would suggest that even persons aged about 59 years are employed with the management. Consequently, the workman is ordered to be reinstated with continuity of service along with 50% back wages and other consequential benefits.

27. Accordingly, this issue is proved in favour of the workman and against the management.

**Relief :**

28. In the view of foregoing finding on the issues above, the industrial dispute is allowed. The workman is ordered to be reinstated with continuity of service along with 50% back wages and other consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

Dated : 12.05.2023.

(JAGDEEP KAUR VIRK) ,  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 10th July 2023

**No. 13/1/9985-HII(2)-2023/9637.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 78/2020 dated 10.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MILY MITTAL, H.NO.87/8, MOHALA LOHARA, DERABASSI, DISTRICT MOHALI (Workman)

AND

- (1) CHIEF SECRETARY TO GOVT. HARYANA, SECTOR 1, CHANDIGARH
- (2) M/S HARTON INFORMATICS LIMITED, HARTON BHAWAN, BAY NO.73-76, SECTOR 2, PANCHKULA (Management)

**AWARD**

1. Mily Mittal, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was initially screened, selected and appointed by management No.2 as Data Entry Operator on 15.02.2016 and was deployed at the work place of management No.1 at Haryana Civil Secretariat, Sector 1, Chandigarh. The workman remained in the continuous employment up to 12.06.2018 when her services were illegally and wrongfully terminated by management No.1 *vide* Memo No.8/4/2017-2Estt.-II dated 12.06.2018, Chandigarh on the pretext that work & behaviour of the workman is not satisfactory and her services were terminated with immediate effect from Haryana Civil Secretariat. The workman was drawing ₹ 14,850/- per month as wages at the time of termination. The workman made a number of requests to management No.1 for her reinstatement but no action has been taken on her request. After termination the workman approached management No.2 and explained her work, conduct and contents of termination letter. The management No.2 also endorsed the statement and order of management No. 1. Both the managements have violated Clause 3 of service agreement executed on 14.03.2017 between workman and the Chief Secretary to Govt. of Haryana through Under Secretary to Government of Haryana, Chandigarh. As per Clause 3 of the service contract, in the event of unsatisfactory work or performance by Mily Mittal, the present service contract shall be terminated after giving appropriate opportunity for non-performance to the first party i.e. Mily Mittal, the workman. No opportunity was given to the workman in case there was any complaint against her. The Superintendent Home - III Branch, Haryana Civil Secretariat, Chandigarh *vide* his letters dated 10.06.2016, 03.05.2016, 01.06.2016, 05.10.2016, 01.11.2016, 02.12.2016, 30.12.2016, 01.03.2017, 03.04.2017, 01.05.2017, 01.06.2017, 03.07.2017, 04.09.2017, 03.10.2017, 02.11.2017, 01.01.2018, 06.03.2018 and 05.04.2018 respectively, clearly mentioned that during the period i.e. from 01.11.2016 to 28.02.2017 her work & conduct has been found satisfactory. The services of Data Entry Operator are still required for computer work. All the letters were duly received in Home General Branch. The duties of the workman to work as Data Entry Operator were in Issue Branch, New Secretariat Building, Sector 17, Chandigarh for 1st half day and at Printing & Stationary Branch for 2nd half day. There was no complaint against the work & conduct of the workman from any of her colleagues and superiors. The Superintendent, Home Branch - II has personal prejudice against the workman. He wanted to appoint his own man in place of workman and he used to level false allegations against the workman for no justified reasons. The termination of the workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The managements have violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the

time of termination, which makes the termination void. For her reinstatement the workman served upon the managements a demand notice. The managements neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, was requested for intervention. The Conciliation Officer intervened and fixed a number of days for amicable settlement. The management No.1 did not appear before the Conciliation Officer on any date. However, the management No.2 refused to take the workman back on duty. Prayer is made that the workman may be reinstated with continuity of service, full back wages as the workman remained unemployed during the period i.e. from the date of termination till date, without any change in her service conditions and with all attendant benefits.

3. On notice management No.1 contested the claim statement by filing written statement on 09.08.2021 wherein preliminary submissions are made on the ground that the workman on being deployed on job work basis by management No.2 i.e. HARTRON Informatics Limited (*in short 'HIL'*) was initially engaged as Data Entry Operator on contractual basis in the Haryana Civil Secretariat for a period of one year w.e.f. 15.02.2016 to 14.02.2017. On having rendered work satisfactorily for the period of initial engagement of one year, she was engaged for another one year i.e. from 15.02.2017 to 14.02.2018 on contract basis. During the second year of engagement, three complaints dated 17.10.2017, 27.10.2017 and 08.11.2017 were reported against her but taking a lenient view, no action was taken against her. Notwithstanding, she was again engaged for another one year from 15.02.2018 to 14.02.2019. Having engaged for another one year despite the complaints against her, she did not show any improvement with regard to her work and behaviour. In this regard, the monthly attendance reports for the months of February 2018, March 2018 and April 2018 by the concerned Superintendents substantiate the stand of the answering management. In addition, the workman was called for personal hearing before the then Special Secretary, Secretariat Establishment, Haryana Civil Secretariat on 03.05.2018. Keeping in view the aforesaid facts, she was given one month time to show improvement in work as well as behaviour towards her colleagues in the office. However, again two complaints both dated 09.05.2018 were received against her. In the mean time, adverse report dated 01.06.2018 against her by the concerned Superintendent was received. Hence, despite giving ample opportunities she failed to show any improvement. Thus, the matter was put up to the level of the then Chief Secretary, highest authority of the State, wherein it was decided to invoke the provisions contained in the service contract agreement dated 15.02.2018 executed between the workman and management No.1 culminating in termination of her engagement vide letter dated 12.06.2018. The workman in her communication dated 13.11.2018 addressed to both the managements, on the one hand has cited that she was terminated by levelling false and frivolous allegations and claims to have been harassed and maltreated by management No.1. On the other hand, vide her communication dated 11.02.2019 addressed to management No.1, she has offered apology for any of her misconduct which she claims to have been due to her rude behaviour as a result of either due to not taking medicines and due to the side effects of the medicines. She has duly mentioned therein that she was not in the best of her mental state and was undergoing treatment. Thus, the workman has admitted to her wrong doings by her own accord. Both of her above communications were made at her own accord and after termination of her contract, though, she never divulged any information regarding her mental state and the treatment being undergone by her during her engagement as Data Entry Operator with management No.1. The contention of the workman citing her termination to be illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice, is totally misplaced in view of the facts cited above. Relieving the workman by management No.1 is neither wrongful, motivated nor against the principles of natural justice and unfair labour practice but well within the frame work of mutually agreed upon terms & conditions as contained in para 3 of service contract agreement dated 15.02.2018.

4. Further on merits, it is replied being matter of record that the workman was appointed by the management No.2 and was deployed at the work place of management No.1. It is further replied being matter of record that the workman remained in continuous employment up to 12.06.2018 and her services were terminated vide memo No.8/2017-2Estt.II dated 12.06.2018. It is stated that the termination of service contract was well within the frame work of the terms & conditions of the service agreement dated 15.02.2018 executed between the workman and management No.1. The fact that duty of the workman were in Issue Branch, New

Secretariat Building, Sector 17, Chandigarh for the 1st half and at Printing & Stationary Branch for the 2nd half is replied being matter of record. Further similar stand is taken as taken in the preliminary submissions. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed.

5. Management No.2 contested the claim statement by filing written statement on 21.12.2020 wherein it is stated that the State of Haryana framed a policy dated 29.12.2008 for engagement of Computer Professional on job work basis through HIL. HIL is wholly owned subsidiary of Haryana State Electronics Development Corporation Limited (*in short 'HARTRON'*) the work of engagement of IT Professionals / Computer Professionals on job work basis now been allocated to HARTRON w.e.f. 13.07.2018, so the reply is being filed by HARTRON. As per the policy the answering management is authorised to deploy IT professionals / computer professionals on job work basis from the empanelled list in the Departments / Boards/ Corporations as per their requirement. After deployment of the IT professional / computer professionals in the intending department, HARTRON / HIL has no concern with the said professional. As per Clause III of the notification dated 17.03.2010 regarding the placement of IT / Computer professionals, the role of corporation is limited to initial screening and selection of IT / computer professionals. The corporation charges fee equal to one month's remuneration of the computer professionals so deployed from concerned department. Thereafter, the concerned professional shall be on the roll of the intending department for any service matter. In respect to this case, it is submitted that the workman Mily Mittal *vide* letter No. HIL:2016:2606-07 dated 10.02.2016 was initially appointed as Data Entry Operator by HIL in the office of Chief Secretary, Haryana, Haryana Civil Secretariat. *Vide* Chief Secretary, Haryana, Haryana Civil Secretariat letter No.8/4/2017-2 Estt.-II dated 12.06.2018 Mily Mittal was terminated with immediate effect due to the work & behaviour of Mily Mittal was not satisfactory. The matter relates to office of Chief Secretary, Haryana Civil Secretariat, Chandigarh and the corporation has no role in this matter as the role of corporation is limited to initial screening, selection and deployment of IT / computer professionals and has no further role relating to the deployed IT / computer professional.

6. The workman filed separate rejoinder to the written statement of management No.1 & 2 wherein the contents of the written statement are denied except admitted facts of the claim statement and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed *vide* order dated 07.10.2021:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

8. In evidence the workman Mily Mittal examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 09.11.2022 the workman closed her evidence.

9. On the other hand, management No.1 examined MW1 Naveen Kumar Sharma - Assistant, Establishment - II Branch, Haryana Civil Secretariat, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M8'.

**Exhibit 'M1'** is attendance report for the month of February 2018, March 2018 and April 2018.

**Exhibit 'M2' & 'M3'** is two complaints both dated 09.05.2018 against the workman addressed to the Superintendent of Establishment-II, Branch.

**Exhibit 'M4'** is complaint dated 01.06.2018 against the workman addressed to the Superintendent of Establishment-II, Branch.

**Exhibit 'M5'** is service contract agreement dated 15.02.2018 between the workman and the Chief Secretary to Govt. of Haryana, through Under Secretary to Govt. of Haryana, Secretariat Establishment.

**Exhibit 'M6'** is termination of service contract of workman dated 12.06.2018.



**Exhibit 'M7'** is communication dated 13.11.2018 of the workman addressed to management No.1 & 2.

**Exhibit 'M8'** is communication dated 11.02.2019 of the workman addressed to management No.1 i.e. Chief Secretary to Govt. Haryana, Sector-1, Chandigarh.

The documents are put to the witness in his cross-examination as Exhibit 'R1', Exhibit 'R2', Exhibit 'R5' and Exhibit 'R6' instead of Exhibit 'M1', Exhibit 'M2', Exhibit 'M5' and Exhibit 'M6'. In order to avoid any ambiguity the documents put to MW1 in his cross-examination as Exhibit 'R1', Exhibit 'R2', Exhibit 'R5' and Exhibit 'R6' are hereinafter referred as Exhibit 'M1', Exhibit 'M2', Exhibit 'M5' and Exhibit 'M6' respectively.

10. Management No.2 examined MW2 Rajeev Chhabra - Programmer, Haryana State Electronics Development Corporation Limited (HATRON), who tendered his affidavit Exhibit 'MW2/A' along with copies of documents Exhibit 'M2/1' to Exhibit 'M2/7'.

**Exhibit 'M2/1'** is notification dated 06.11.2001 authorising Hartron Informatics Ltd. (HIL) for engagement of computer professionals on job work basis.

**Exhibit 'M2/2'** is notification dated 13.07.2018 declaring Hartron for engagement of computer professional on job work basis in place of HIL.

**Exhibit 'M2/3'** is notification dated 07.01.2021 issued by I.T. Department to all Administrative Secretaries, Head of Department, Divisional Commissioner etc.

**Exhibit 'M2/4'** is letter dated 10.02.2016 issued by HIL to The Superintendent Establishment-II, Haryana Civil Secretariat, Chandigarh regarding placement of Computer professional on job work basis.

**Exhibit 'M2/5'** is letter dated 04.01.2016 issued by Chief Secretary to the Managing Director, HIL, Panchkula.

**Exhibit 'M2/6'** is letter dated 12.06.2018 issued by Chief Secretary to the Managing Director, HIL, Panchkula regarding termination of services of the workman.

**Exhibit 'M2/7'** is notification dated 17.03.2010 issued by the Financial Commissioner & Principal Secretary to Govt. of Haryana Electronics & Information Technology Department to all Administrative Secretaries, Head of Department, Divisional Commissioner etc.

11. On 19.04.2023 Learned Representative for management No.2 closed evidence and on 01.05.2023 the Government Pleader closed evidence on behalf of management No.1.

12. I have heard arguments of Learned Representatives for the workman and management No.2 and Government Pleader for management No.1 and perused the judicial files. My issue-wise findings are as below :—

**Issue No. 1 :**

13. Onus to prove this issue is on the workman.

14. Under this issue Learned Representative for the workman referred the testimony of AW1 Mily Mittal, who *vide* her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

15. On the other hand, Learned Government Pleader for management No.1 referred the testimony of MW1 Naveen Kumar Sharma, who *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement and supported his oral version with documents Exhibit 'M1' to Exhibit 'M8'.

16. Learned Representative for management No.2 referred the testimony of MW2 Rajiv Chhabra, who *vide* his affidavit Exhibit 'MW2/A' deposed all the contents of the written statement of management No.2 and supported his oral version with documents Exhibit 'M2/1' to Exhibit 'M2/7'.

17. From the oral as well as documentary evidence led by the parties, it comes out that the State of Haryana framed a policy dated 06.01.2001 / Exhibit 'M2/1' for engagement of computer professionals on job

work basis through HIL, which is wholly owned subsidiary of HARTRON. The work of engagement of IT professionals / computer professionals on job work basis has been allocated to HARTRON w.e.f. 13.07.2018. The workman Mily Mittal was deployed as Data Entry Operator by HIL *vide* letter dated 10.02.2016 / Exhibit 'M2/4' in the office of Chief Secretary, Haryana, Haryana Civil Secretariat, Chandigarh against their requisition *vide* letter dated 04.01.2016 / Exhibit 'M2/5'. Thus the workman was appointed as Data Entry Operator by management No.2 and deployed at the work place of management No.1 w.e.f. 15.02.2016 to 14.02.2017 or till the recruitment / appointment of Clerks. Accordingly, service contract agreement was executed between the workman and management No.1. Undisputedly, the workman rendered satisfactory work for initial period of one year, thereafter the fresh service contract agreement was executed for another one year w.e.f. 15.02.2017 to 14.02.2018 on consolidated salary. The workman has taken the plea that there was no complaint against the work & conduct of the workman from any of her colleagues and superiors. The Superintendent Home Branch - II has personal prejudice against the workman and he wanted to appoint his own man in the place of the workman and he used to level false allegations against the workman. Ultimately, the workman was illegally terminated by management No. 1 *vide* memo dated 12.06.2018 on the pretext that the work & behaviour of the workman is not satisfactory. Whereas the Superintendent Home - III Branch, Haryana Civil Secretariat, Chandigarh *vide* letters dated 10.06.2016, 03.05.2016, 01.06.2016, 05.10.2016, 01.11.2016, 02.12.2016, 30.12.2016, 01.03.2017, 03.04.2017, 01.05.2017, 01.06.2017, 03.07.2017, 04.09.2017, 03.10.2017, 02.11.2017, 01.01.2018, 06.03.2018 and 05.04.2018 respectively, clearly mentioned that during the period i.e. from 01.11.2016 to 28.02.2017 her work & conduct has been found satisfactory. On the other hand, management No.1 has taken the plea that during the period of second contract agreement, three complaints dated 17.10.2017, 27.10.2017 and 08.11.2017 were received with reply dated 04.08.2021 filed by the management No.1. But the management No.1 taken a lenient view and did not take any action against the workman and her another service contract agreement for the period w.e.f. 15.02.2018 to 14.02.2019 was executed between the workman and management No.1 on 15.02.2018. The workman did not show any improvement regarding her work & conduct. To support his argument Learned Government Pleader for management No.1 referred document Exhibit 'M1' i.e. attendance report for the month of February 2018, March 2018 and April 2018. In the attendance report of February 2018 the remarks are given by the Superintendent, Printing & Stationary Branch that the work of type of this official needs to be improved in future. In the attendance report of March 2018, the remarks are given by the Superintendent, Printing & Stationary Branch that she required to do the official work in time as speed of work is very poor. In attendance report of April 2018, the remarks are given by the Superintendent, Printing & Stationary Branch that earlier she has been repeatedly requested to do the official work well in time / in a time bound manner but to no avail. Hence, needs to upgrade her skills. Learned Government Pleader also referred Exhibit 'M2' i.e. complaint addressed from Dharambir - Clerk, Printing & Stationary Branch against the conduct of Mily Mittal, Exhibit 'M3' i.e. complaint addressed from Narinder - Clerk Nirgam (Issue) Branch to Secretariat Establishment, Haryana Civil Secretariat, Chandigarh against the conduct of Mily Mittal and Exhibit 'M4' i.e. report dated 01.06.2018 whereby the Superintendent of the concerned branch reported that Mily Mittal is non-cooperative, consisting lackadaisical and work shirker attitude. She is expert in making false / baseless / derogatory allegations against the branch official(s). It is further reported that in regard of completing official work in time, she violates / ignore the instructions without hesitation. She is a habitual offender to skip the office after sitting 10-12 minutes for a gap of 5-15 minutes as well as coming / reaching late in office which can be accessed from copy of attendance register. Learned Government Pleader by making reference to the documents Exhibit 'M1' to Exhibit 'M4' contended that the despite ample opportunities the workman failed to show any improvement in her work & conduct. Thus, the matter was putting before the then Chief Secretary wherein it was decided to invoke the provisions contained in service agreement dated 15.02.2018 / Exhibit 'M5' culminating in termination of service contract of the workman *vide* letter dated 12.06.2018 / Exhibit 'M6'. Learned Representative for the workman has argued that from the date of appointment up to 28.02.2017 the work & conduct of the

workman has been found satisfactory and it was recommended to continue her services. To support his arguments Learned Representative for the workman referred cross-examination of MW1 wherein he has admitted as correct that the letters dated 30.05.2016, 01.06.2016, 01.10.2016, 05.10.2016, 01.11.2016, 02.12.2016, 30.12.2016, 01.03.2017, 03.04.2017, 01.05.2017, 01.06.2017, 03.07.2017, 04.09.2017, 03.10.2017, 02.11.2017 and 01.01.2018 the work & conduct of the workman was good and it was recommended to continue the services of the workman. MW1 in his cross-examination admitted as correct that there was no complaint against the workman during her entire period of service except from 06.03.2018 to 05.04.2018. To my opinion, from the documents Exhibit 'M1' to 'M4' and cross-examination of MW1 it is made out that from the date of joining service i.e. 15.02.2016 till January 2018, there was no complaint against the act & conduct of the workman. First complaint against the workman is of dated 09.05.2018 moved by Dharambir - Clerk (Printing & Stationary Branch) i.e. Exhibit 'M2', second complaint against the workman is of dated 09.05.2018 moved by Narinder - Clerk (Nirgam / Issue Branch) i.e. Exhibit 'M3' and third is the assessment report dated 01.06.2018 against the work & conduct of the workman i.e. Exhibit 'M4'. The above said complaints formed basis of recording adverse remarks in the attendance report of February 2018, attendance report of March 2018 and attendance report of April 2018, which are Exhibit 'M1'. The management although recorded in the attendance report of the workman that her work needs to be improved in future and she is required to do the official work in time as speed of her work is very poor and further that she has been repeatedly requested to do the official work in time / in a time bound manner but to no avail and she needs to upgrade her skills, but the management has not placed on record any document showing that these adverse remarks were ever conveyed or communicated to the workman calling her explanation and granting her opportunity to improve her work. None of the attendance reports bears any endorsement of the workman to show that she has received the same. Besides, in assessment report Exhibit "M4", it is mentioned that Mily Mittal - DEO was heard in person by W/Special Secretary, Secretariat, Establishment in the starting of month of May 2018 but the aforesaid fact mentioned in the assessment report finds no corroboration as there is no notice ever issued by the management to the workman calling her for personal hearing. Even the specific date when she was allegedly heard in person is not mentioned. No doubt after her termination the workman moved request application Exhibit 'M8' on 11.02.2019 seeking to drop adverse remarks against her to Chief Secretary, Government of Haryana, Establishment Branch - II mentioning therein that she tendered apology but the careful reading of Exhibit 'M8' would reveal that the workman has not admitted any of the allegations levelled against her but requested that in case by mistake she had said something to someone she apologize the same. The fact that the workman has failed to bring on record her medical record showing that she was under medical treatment on account of mental stress or depression, does not justify the termination order Exhibit 'M6'. It is for the management to prove that before terminating the workman she was provided an opportunity as stipulated in service contract agreement Exhibit 'M5'.

18. Now the question before this Court is if termination of services of the workman on the basis of adverse remarks against her work & conduct by invoking Clause 3 of agreement dated 15.02.2018 / Exhibit 'M5' is justified or not. Service contract agreement dated 15.02.2018 / Exhibit 'M5' is executed between Mily Mittal as first party and Chief Secretary to Government of Haryana through Under Secretary to Government Haryana, Secretariat Establishment as second party. As per Clause 3 of Exhibit 'M5' Mily Mittal, the first party has been engaged as Data Entry Operator with the second party for a period of one year from 15.02.2018 to 14.02.2019 which period may be reduced due to the cessation of the above job earlier or unsatisfactory performance of the first party i.e. Mily Mittal or till the recruitment / appointment of new Clerks through HSSC, whichever is earlier. In the event of un-satisfactory work or performance by Mily Mittal, the present service contract agreement shall be terminable after giving appropriate opportunity for non-performance to the first party. By virtue of Clause 3 of Exhibit 'M5' the management No.1 was required to give appropriate opportunity to the first party i.e. Mily Mittal to improve her performance. But in the present case, management No.1 did not provide any appropriate opportunity to the workman to improve her performance. Merely

recording of adverse remarks in the monthly attendance report does not amount to providing of opportunity to the workman for improving her performance. Admittedly, before termination of services of the workman neither any charge sheet was issued, nor any departmental inquiry was conducted against her conduct. In this regard, MW1 in his cross-examination admitted as correct that the workman was neither charge sheeted nor any departmental inquiry was conducted against her. MW1 denied the suggestion as wrong that no opportunity was given to the workman before terminating her services. MW1 voluntarily stated that the workman was given opportunity of personal hearing and one month's time to show improvement in her work & conduct. The aforesaid version of MW1 does not stand proved because MW1 failed to place on record any document showing that the workman was given opportunity of personal hearing and one month's time to show improvement in her work & conduct. MW1 in his cross-examination admitted as correct that in Exhibit 'M6' there is no reference of providing any kind of opportunity to the workman before terminating her services. MW2 in his cross-examination stated that after deployment of the computer professional, the corporation has no role and the entire responsibilities are of the concerned department of Government of Haryana. He cannot comment on the termination of the workman. The perusal of order of termination dated 12.06.2018 / Exhibit 'M6' would reveal that it finds no reference of any opportunity granted to the workman or issuance of any prior notice to the workman before terminating her services. The relevant contents of order of termination dated 12.06.2018 / Exhibit 'M6' are reproduced as below :—

*"2. As per report of concerned officer the work and behaviour of Ms. Mily Mittal is not satisfactory. So the services of one Data Entry Operator namely Ms. Mily Mittal D/o Sh. Vinod Kumar is hereby terminated with immediate effect from Haryana Civil Secretariat."*

From the discussion made above, it is duly proved on record that the services of the workman are terminated by management No.1 without providing appropriate opportunity to her as required under Clause 3 of service contract agreement Exhibit 'M5'. Consequently, termination of workman is illegal and hereby set aside and the workman is ordered to be reinstated with continuity of service and 50% back wages along with all consequential benefits.

19. Accordingly, this issue is proved in favour of the workman and against the management No.1.

**Relief :**

20. In view of the discussion on issue above, the present industrial dispute is allowed to the effect that the termination order dated 12.06.2018 / Exhibit 'M6' is set aside being illegal and the workman is ordered to be reinstated with continuity of service and 50% back wages along with all consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 10.05.2023.

(JAGDEEP KAUR VIRK) ,  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152

Secretary Labour  
Chandigarh Administration.



**CHANGE OF NAME**

I, Haresh Kumar, Son of Sh. Bhavnes Kumar, R/o 2633-B, Sector 28-C, Chandigarh, have changed my name to Harish Kumar.

[852-1]

I, Mandeep Singh, S/o Amar Singh Taunk, # 1111, Phase 2, Ramdarbar, Chandigarh, have changed my name to Mandeep Taunk.

[853-1]

I, Rajinder Kumar, Taneja, S/o # Sh. C D Taneja, R/o H. No. 2010, Sector 20-C, Chandigarh, has change my name from Rjainder Kumar Taneja to Rajinder Taneja.

[854-1]

I, Bhakta Bhadur, S/o Shree Ram Rasali, R/o # 588A, Sector-7, Chandigarh, changed my name from Bhakta Bhadur to Bhakta Bahadur Rasali.

[855-1]

I, Kunwarpal, S/o Nanuki Singh, # 265/7, Bangola Basti, Manimajra, Chandigarh, have changed my name to Kunwar Pal Singh.

[856-1]

I, Raj Kumar, S/o Sh. Chandhul Chauhan, R/o H. No. 2053, Sector 24-C, Chandigarh, have changed my name from Raj Kumar to Raj Kumar Chauhan.

[857-1]

मैं, विनोद कुमार उर्फ विनोद ठाकुर उर्फ विनोद कुमार ठाकुर, पुत्र फतेह सिंह, निवासी # 2057, सेक्टर 23सी, चंडीगढ़, ने सभी उद्देश्यों के लिए अपना नाम बदलकर विनोद कुमार ठाकुर रख लिया हूँ।

[858-1]

I, Manjot Doad, D/o S. Gurpreet Singh Doad, R/o # 5693, Modern Housing Complex, Manimajra, Chandigarh, have changed my name to Moonstar Kaur.

[859-1]

I, Radhika, D/o Vikram Aggarwal, # 52, Sector 28-A, Chandigarh, have changed my name to Raadhika Aggarwal.

[860-1]

*"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."*